

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

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Joint Petition for Resolution of Disputes	)	
Relating to Billing Performance	)	Docket No. 03-0769
Measurements	)	

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**STAFF REPLY COMMENTS ON DISPUTED ISSUES RESULTING  
FROM THE BILLING PERFORMANCE MEASURE COLLABORATIVE AND  
THE THIRD SIX-MONTH PM REVIEW COLLABORATIVE**

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**I. Introduction**

On December 17, 2003, Illinois Bell Telephone ("SBC Illinois") and CLEC participants<sup>1</sup> filed a Joint Petition For Expedited Resolution Of Disputes Relating To Billing Performance Measurements ("Original Joint Petition"), jointly requesting that the Commission address disputed issues from a billing collaborative effort. On February 24, 2004, SBC Illinois and CLEC participants<sup>2</sup> (collectively, the "Parties") filed an Amended Joint Petition For Expedited Resolution Of Disputes Relating To Performance Measurements ("Amended Joint Petition"), jointly requesting that the Commission initiate a proceeding to resolve two groups of disputes regarding performance measurement ("PM") issues upon which the Parties were unable to reach agreement following two sets of collaborative discussions -- one related specifically to billing related

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<sup>1</sup> CLEC participants to the December 17, 2003, joint petition included AT&T Communications of Illinois, Inc., TCG Illinois, TCG Chicago, WorldCom, Inc. d/b/a MCI on behalf of itself and its Illinois operating entities ("MCI"), and McLeodUSA Telecommunications Services, Inc.

<sup>2</sup> CLEC participants to the February 24, 2004, amended petition include AT&T Communications of Illinois, Inc., TCG Illinois, TCG Chicago, WorldCom, Inc. d/b/a MCI on behalf of itself and its Illinois operating entities ("MCI"), McLeodUSA Telecommunications Services, Inc., and Forte Communications, Inc.

performance measurements and the other related to the 2003 six-month collaborative. Amended Joint Petition at 1. The two groups of disputed PM issues were outlined in Attachments A and B to the Amended Joint Petition. Attachment A listed five unresolved billing PM issues from the billing PM collaborative meetings held between January 30, 2003, and August 28, 2003.<sup>3</sup> Amended Joint Petition at 3-4, Attachment A. Attachment B listed sixteen unresolved PM issues from the 2003 third six-month PM collaborative meetings held between August 8, 2003, and January 15, 2004.<sup>4</sup> *Id.* at 4-8, Attachment B.

On April 14, 2004, SBC Illinois filed its initial comments on disputed issues resulting from the billing PM collaborative (“SBC Billing PM Comments”), as well as its initial comments on disputed issues resulting from the 2003 six-month review collaborative (“SBC PM Comments”). The SBC Billing PM Comments were supported by the Ehr Billing PM Affidavit cited in footnote 3 above, and the SBC PM Comments were supported by the Affidavit of James D. Ehr On Behalf of SBC Illinois (“Ehr Billing PM Affidavit”). MCI’s Initial Comments On Disputed Issues (“MCI Comments”) was also filed on April 14, 2004, addressing disputed issues from both the billing PM collaborative and the 2003 six-month PM review collaborative. Forte’s Initial Comments On Disputed Issues (“Forte Comments”) were filed on April 15, 2004, and addressed a

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<sup>3</sup> The participants in the 2002 six-month review collaborative agreed to defer discussion of PM CLEC BLG-2 and several other proposed PMs to a special billing PM collaborative. Initial Affidavit of James D. Ehr On Behalf of SBC Illinois Regarding The Disputed Issues From The Billing PM Collaborative (“Ehr Billing PM Affidavit”) at ¶ 6.

<sup>4</sup> SBC Illinois first implemented a remedy plan in Illinois pursuant to the remedy plan implemented pursuant to Condition 30. Both the 01-0120 Remedy Plan and the 271 Remedy Plan includes language requiring SBC Illinois to meet with CLECs every six months to review performance measures, make changes to existing PMs and add new PMs. See Order, Docket no. 01-0120, Attachment A, ¶¶6.3; see also, Order, Docket 01-0662, Remedy Plan, ¶¶6.4.

single disputed issue resulting from the most recent six-month performance measurement review collaborative.<sup>5</sup>

In response to these comments and affidavits, Staff herein submits its position to the Illinois Commerce Commission (“Commission”) on the disputed issues arising from the billing PM collaborative as well as the 2003 six-month review PM collaborative. As an initial matter, and notwithstanding the disputed issues yet to be resolved in this proceeding, Staff notes the continuing successful nature of the performance measurement collaborative efforts, and commends the Parties on their ability and willingness to resolve matters through negotiation. It is clear from the original and amended joint petitions that the Parties were able to agree upon many improvements to SBC Illinois’ performance measurement business rules without resorting to litigation or other dispute resolution processes.<sup>6</sup> Some of the improvements that occurred through these negotiations were changes to documentation, addition and deletion of performance measures, the addition and removal of remedied PMs, and revisions to benchmarks. These improvements have already been effectuated through tariff filings by SBC Illinois in December 2003 and March 2004.

Notwithstanding the Parties’ efforts, there were unresolved issues that led the Parties to jointly petition the Commission to resolve 16 issues that were not agreed upon in the 2003 six-month PM collaborative and 5 issues that were not agreed upon in the billing PM collaborative. Staff presents its analysis and recommendation for each

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<sup>5</sup> Forte Communications’ comments address only Disputed Issue 16 from the most recent six-month review collaborative, “Deletion of PM 124 (Timely Resolution of Significant Software Failures Related With Releases) and Replacement With PM 124 (Measurement of Orders Effected By Software Defects Not Resolved Within 48 Hours).”

<sup>6</sup> Table 1 at pages 5-6 of the Amended Joint Petition graphically illustrates the extent to which the parties were able to work together.

disputed issue below. Section II describes the applicable criteria to be used in reviewing proposed PM changes. Section III addresses disputed issues from the 2003 third six-month PM collaborative, while Section IV addresses disputed issues from the billing PM collaborative.

## **II. Criteria of Review**

The Amended Joint Petition acknowledges that the Parties do not fully agree on the authority upon which this proceeding is being conducted. Amended Joint Petition at 2. SBC Illinois contends that the Commission has authority under §6.4 of the remedy plan approved in Docket No. 01-0662 (“271 Remedy Plan”). CLEC participants contend that the Commission’s authority for review is under §6.3 of the remedy plan approved in Docket No. 01-0120 (“01-0120 Remedy Plan”). Although the two provisions relied upon by the parties contain different language -- and the 01-0120 provision specifies criteria for reclassifications of PMs whereas the 271 remedy plan provision does not -- the two provisions also contain identical language with respect to the criteria to be applied for changes or modifications to PMs that do not involve a reclassification. Further, the parties have not raised the slight difference in criteria as a disputed issue in this proceeding.

A side-by-side comparison of Section 6.4 of the 271 Remedy Plan and Section 6.3 of the 01-0120 Remedy Plan is provided below to show the similarities and differences between the two provisions (identical criteria language is shown with single underlining, different criteria language is shown with double underlining):

#### 271 Remedy Plan, §6.4

Every six months, telecommunications carrier may participate with Company, other telecommunications carriers, and Commission representatives to review the performance measures to determine (a) whether measurements should be added, deleted, or modified; (b) whether the applicable benchmark standards should be modified or replaced by parity standards, or vice versa; and (c) whether to move a classification of a measure, either Tier 1, Tier 2 or both, from Remedied to Diagnostic, or vice versa. Criteria for review of performance measures, other than for possible reclassification, shall be whether there exists an omission or failure, to capture intended performance, and whether there is duplication of another measurement. Any changes to existing performance measures and this remedy plan shall be by mutual agreement of the parties and approval of the Commission. Should disputes occur regarding changes, additions, and /or deletions to the performance measurements, the dispute shall be referred to the Commission for resolution. The current measurements and benchmarks will be in effect until modified hereunder through this review process or expiration of this remedy plan.

#### 01-0120 Remedy Plan, §6.3

Every six months, CLEC may participate with Ameritech, other CLECs, and Commission representatives to review the performance measures to determine whether measurements should be added, deleted, or modified; whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to move a classification of a measure to High, Medium, Low, Diagnostic, Tier-1 or Tier-2. The criteria for reclassification of a measure shall be whether the actual volume of data points was lesser or greater than anticipated, whether the service is nascent or any other evidence establishing that the performance measure at issue is significantly inaccurate or changed from that reflected in the current Remedy Plan. Criteria for review of performance measures, other than for possible reclassification, shall be whether there exists an omission or failure, to capture intended performance, and whether there is duplication of another measurement. Performance measures for 911 may be examined at any six-month review to determine whether they should be reclassified. Any changes to existing performance measures and this remedy plan shall be by mutual agreement of the parties and, if necessary, with respect to new measures and their appropriate classification, by arbitration. The current measurements and benchmarks will be in effect until modified hereunder or expiration of the interconnection agreement.

Based on the filings in this docket, the Parties do not appear to consider their dispute as to the source of authority for this proceeding to be an issue that needs to be addressed in this proceeding. It is Staff's understanding that the Parties are merely



attempting to preserve arguments to be addressed elsewhere as to whether the 271 remedy plan or the 01-0120 remedy plan are currently applicable under their respective interconnection agreements. The criteria for review of proposed changes or modifications other than for possible reclassification are identical, and although the 01-0120 remedy plan provision sets forth criteria for reclassification issues (and the 271 remedy plan does not), the 271 plan does contemplate reclassifications and is simply silent with respect to any criteria. Under these circumstances (and the failure of any party to raise this as an issue), the Commission should apply the reclassification criteria set forth in the 01-0120 remedy plan if relevant and substantively applicable to any disputed issue involving a reclassification.

Accordingly, the criteria for decision to be applied in this proceeding are the identical criteria for non-reclassification PM issues set forth in § 6.4 of the 271 remedy plan and § 6.3 of the 01-0120 remedy plan, and the criteria for reclassification PM issues set forth in §6.3 of the 01-0120 Remedy Plan. These criteria should apply unless the criteria are inapplicable on their face to the issue presented. Thus, if an issue involves the reclassification of a PM, the party seeking such a change must show that: (i) the actual volume of data points was lesser or greater than anticipated; or (ii) the service is nascent; or (iii) any other evidence establishing that the performance measure at issue is significantly inaccurate or changed from that reflected in the current Remedy Plan. A PM is being reclassified if it is being moved from Remedied<sup>7</sup> to Diagnostic<sup>8</sup>, and vice versa, or if its designation as a Tier 1 or Tier 2 remedy payment is being changed,

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<sup>7</sup> A “Remedied” PM means a performance measure that requires SBC Illinois to pay either Tier 1 and/or Tier 2 payments if SBC Illinois fails to meet the standard.

<sup>8</sup> A “Diagnostic” PM means a performance measure that measures the level of service performance, however it does not require SBC Illinois to make Tier 1 or Tier 2 payments for failing to meet a standard and may or may not have an applicable standard.

or if its payment designation of high, medium or low is being changed, All other types of changes require the party seeking the change to show that: (i) there exists an omission or failure to capture intended performance; or (ii) there is duplication of another measurement. 271 Remedy Plan, § 6.4; 01-0120 Remedy Plan, §6.3.

In identifying the criteria and evaluating the issues under these criteria several deficiencies become evident. For a majority of the disputed issues, the Parties appear to ignore the criteria and apply their own rationale for justifying a change in reclassification or other change. This is not a problem where the criteria do not fit the issue. That is, in reviewing the issues brought forth by the Parties, it is evident that the criteria are not comprehensive enough to address each and every change that could be made to a PM. But where the criteria do fit and apply to the issue at hand, such criteria must control. In its analysis and recommendation below, Staff will apply the criteria set forth in the 271 Remedy Plan and the 01-0120 Remedy Plan and, as necessary, will address arguments raised by the Parties for issues not fitting within the criteria.

### **III. Disputed Performance Measure Issues**

#### **Disputed PM Issue 1: Whether PM MI 11 (Average Interface Outage Notification) Should be Deleted**

SBC Illinois recommends that PM MI 11 be deleted. SBC PM Comments at 3; Ehr PM Affidavit at ¶¶ 10-11. SBC Illinois indicates that PM MI 11 is a diagnostic (i.e., not remedied) PM, and that over the three years MI 11 has been in effect no CLEC has ever indicated that it should be changed to a remedied PM or that it should have a

performance standard established<sup>9</sup>. Based on this historical background, SBC Illinois asserts that PM MI 11 is not required to measure performance on a competition-affecting process. *Id.* SBC Illinois also claims that its results for PM MI 11 have been outstanding with notifications to CLECs taking an average of 7.19 minutes. *Id.* Finally, SBC Illinois indicates that compiling and producing results for PM MI 11 is costly and involves significant manual processing. *Id.*

MCI opposes deletion of PM MI 11 on the grounds that SBC has not explained why this measure is not useful to ensure that CLECs receive outage information in a timely manner. MCI Comments at 2. MCI asserts that it is important that CLECs be notified of interface problems in a timely manner to make alternative uses of personnel time, and for escalation of critical interface problems if needed. *Id.* MCI also notes that the same measure exists in both the Bell South and Verizon territories, and states that the information provided by PM MI 11 is not duplicative of some other measure. *Id.* MCI also contends that PMs should not be eliminated just because they show no current performance problems, and points out that one reason for the existence of PMs and remedy plans is to protect against backsliding. *Id.* at 2-3.

Staff notes that the directly applicable criteria for this PM issue under both Section 6.4 of the 271 Remedy Plan and Section 6.3 of the 01-0120 Remedy Plan is “whether there exists an omission or failure, to capture intended performance” or “whether there is duplication of another measurement”. SBC Illinois contends that PM

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<sup>9</sup> A “performance standard” is either a “parity” standard or a “benchmark” standard for a given performance measure. A “parity” standard is a performance standard that requires SBC Illinois’ performance under a performance measure to equal or exceed its performance to its retail customers or an affiliate for the same or similar service. A “benchmark” standard is a specific stated level of service (e.g., 95% within 24 hours) that SBC Illinois must meet or exceed in its provision of a wholesale service to its wholesale customers, and is generally applied where there is not a comparable retail service or where an affiliate does not generally purchase or utilize the relevant wholesale service.

MI 11 fails to measure performance on a competition-affecting process (implying that MI 11 was intended to measure a competition-affecting process), whereas MCI counters that MI 11 properly measures whether CLECs receive outage information in a timely manner and is not duplicative of any other measure. It is obvious from the description of PM MI 11 that it was intended to capture the time frame in which CLECs receive notice of interface outages, and there is no question that PM MI 11 measures this aspect of SBC Illinois performance. However, it would be unreasonable to assume that the Parties intended to capture performance on an irrelevant or inconsequential (i.e., having no competitive impact) aspect of performance. Staff notes that the cost and manual requirements to compile and produce results for PM MI 11 does not appear to fall within the specifically enumerated criteria for determining whether to delete this PM.<sup>10</sup>

Staff recommends that PM MI 11 be deleted. Although Staff agrees that problem free or high quality performance does not automatically render a PM irrelevant or inconsequential, the fact that CLECs have not proposed a performance standard for this PM over its three year existence in combination with SBC Illinois' high level of performance establishes, in Staff's opinion, that PM MI 11 is not capturing data that is either relevant or consequential<sup>11</sup>. Thus, the facts in this record establish that PM MI 11 does not capture its intended performance. Staff does not agree with the implication in SBC's argument that all PMs need to be remedied, but does agree that it is reasonable

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<sup>10</sup> SBC Illinois did not provide specific data on the actual costs to generate PM MI 11 data. Instead, SBC Illinois only indicated the amount of time required per month. Ehr PM Affidavit at ¶ 11. Similarly, SBC offered no evidence on what the Parties may have intended with respect to costs and manual processing when PM MI 11 was originally adopted. Without this additional information, this information is not material to the appropriateness of deleting this PM under the applicable criteria.

<sup>11</sup> Staff is unaware of any prohibition against long term diagnostic measures (i.e., not remedied), and recommends that very little weight be given to the fact that CLECs have not sought to make this PM a remedied PM.

for all diagnostic measures to receive a performance standard within a reasonable amount of time. Three years is a reasonable amount of time for PM MI 11. .

**Disputed PM Issue 2: Whether the Performance Standard for the UNE-P Sub-measure of PM 13 (Order Process Percent Flow Through) Should Be Set At a Benchmark Of 95% or 98% or Retained at Parity**

CLECs agreed to SBC Illinois proposal to move from a parity standard to benchmarks<sup>12</sup> for the sub-measures of PM 13 (Order process Percent Flow Through). SBC PM Comments at 4; Ehr PM Affidavit at ¶ 12. The Parties reached agreement on the performance benchmarks for two of the three disaggregations under PM 13, but were unable to reach agreement with respect to percent flow-through<sup>13</sup> for UNE-P orders designed to flow-through. *Id.*

SBC Illinois argues that the Commission should set the benchmark for PM 13 at 95% rather than at 98% as proposed by CLECs. SBC PM Comments at 4-5; Ehr PM Affidavit at ¶¶ 12-18. In support of its position, SBC Illinois states that there is no correlation between flow through and timeliness of delivery of high quality service. *Id.* SBC Illinois also contends that the FCC recognized its flow through rate as consistent with the range they have seen in other 271 applications, while MCI's position of 98% is simply arbitrary and unsupportable. *Id.* Finally, SBC Illinois argues that imposition of a

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<sup>12</sup> A "Parity Standard" is a standard based on a comparison of the level of service that SBC Illinois provides its retail customers, or its affiliates, to what SBC Illinois provides to its wholesale customers. The level of service provided to CLECs must be at least equal to what SBC Illinois provides to its retail customer or its affiliates, within statistical parameters set forth in the applicable remedy plan.

<sup>13</sup> The term "flow through" refers to the percentage of electronic orders that proceed through the ordering process without manual intervention. When an order requires manual intervention, an SBC representative must actually look at the order, determine why the order did not proceed electronically, and then correct the order (or execute the next step in the process) to continue the order down the processing stream. "Fallout" is the converse of flow through, referring to the percentage of electronic orders that require manual intervention at some point in the ordering process.

98% flow through rate for UNE P would force it to prioritize UNE P flow through development efforts ahead of other efforts that may be more meaningful. *Id.*

MCI notes the importance of having orders flow through, and the negative impact on its competitive abilities if they have to operate with a higher degree of manual intervention. MCI Comments at 3-4. MCI also notes that this PM treats a manually entered SBC service order (generated after a local service request (“LSR”) has fallen out of electronic handling) as the baseline for assessing order accuracy. *Id.* MCI further maintains that SBC should be able to achieve a higher flow through rate for UNE-P than for all UNE products combined. *Id.* MCI states that the Commission should either require the UNE P standard to either remain at parity with retail orders, or implement a 98% flow through standard for UNE P orders. *Id.*

Staff recommends that the Commission either require SBC Illinois to leave the current standard at parity with what SBC Illinois provides its retail customers or affiliates, or implement a benchmark standard requiring a 98% flow through for UNE P orders. Staff notes that the issue of an appropriate performance standard is not addressed by the criteria set forth in the 271 Remedy Plan or the 01-0120 Remedy Plan. Failing or omitting to capture intended performance or possible duplication by another measure are not criteria that address the issue of an appropriate performance standard. It is Staff’s view that a performance standard should reflect a reasonable level of performance that SBC Illinois is capable of providing CLECs consistent with its obligation under the Telecommunications Act of 1996. Section 251(c)(2)(C) requires an ILEC to provide interconnection “at least equal in quality to that provided by the [incumbent LEC] to itself or to any subsidiary, affiliate or any other party to which the

carrier provides interconnection.” 47 U.S.C. section 251(c)(2)(C). If a benchmark is not agreed upon by the ILEC and CLECs, then the ILEC is to provide wholesale service that is equal to or better than what it provides itself or its affiliate.

One way of determining the proper level of performance is by making a PM a diagnostic PM. This allows that PM to be monitored for a period of time and enables the parties to determine what is a reasonable level of service that SBC Illinois is capable of providing, consistent with its obligation under the Telecommunications Act of 1996. Staff has found that typically, that period of time is 6 months. Once the PM is agreed upon or ordered to be a diagnostic PM, typically SBC Illinois will collect information on its performance and post that information to a website it maintains -- SBC Illinois' CLEC Online web based performance reporting site. That site contains data related to all of the PMs SBC Illinois' is to comply with. The data posted to SBC's CLEC Online web based performance reporting site for PM 13 shows that SBC Illinois has provided an average electronic flow through rate of 98.4% for the last 6 months of available data for PM 13. See Attachment 1.0.<sup>14</sup> SBC Illinois is already providing flow through rates above 98% for PM 13, UNE P. Since data for the last six months indicates that SBC Illinois is reasonably able to provide flow through rates at or above 98%, that rate appears to be a reasonable level of service to use as a benchmark for PM 13.

In the alternative, Staff recommends that the Commission maintain the current standard, which is parity. SBC Illinois proposes that the standard should be changed to 95%, however such a change effectively allows for a backsliding of current

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<sup>14</sup> October 2003 through March 2004.

performance, since parity would require SBC Illinois to provide PM 13 at approximately 98%. Therefore, if a benchmark of 98% is not set, then parity should be used.

**Disputed PM Issue 3: Whether to increase the current benchmark for PM 100 (Average Time of Out of Service for LNP Conversions) from One Hour to Three Hours**

**Disputed PM Issue 4: Whether PM 101 (Percent Out of Service <60 Minutes) Should Be Deleted**

Disputed PM Issues 3 and 4 are interrelated and Staff addresses them together.

Under Disputed Issue 3 SBC Illinois proposes to increase the benchmark for PM 100 (Average Time of Out of Service for LNP Conversions) from one hour to three hours based on the anticipated impact of wireless number portability. SBC PM Comments at 6; Ehr PM Affidavit at ¶¶ 19-21. SBC indicates that the number of ports has increased by 300,000 to 400,000 over a four month period following implementation of wireless number portability. Ehr PM Affidavit at ¶ 20. LNP conversion is the “actual activation of the port [(i.e., transfer)] once notification from NPAC [(Number Portability Administration Center)] is received . . . .” *Id.* at ¶ 23. SBC Illinois position is that the benchmark for LNP conversions should be increased from one to three hours because a large volume of LNP conversions for wireless ports could cause the queues for the Local Service Management System (“LSMS”) and Switching Control Points (“SCP”) to become congested to the point that some ports may not be processed within one hour. *Id.* at ¶¶ 20-21.

MCI indicates that SBC Illinois should be required to staff its operations in a manner that will handle all LNP conversions, regardless of whether there are increased volumes due to wireline or wireless activity. See MCI Comments at 4-5. MCI also



indicates that it does not object to deleting PM 100 if PM 101 is retained at its <60 minute benchmark. *Id.* at 5. MCI also requests that the Commission set the remedies for the retained metric at high. *Id.*

Reviewing the information posted on SBC Illinois' CLEC Online website for PM 100, performance data shows that SBC Illinois has been easily meeting the one hour standard for the period October 2003 through March 2004. In fact, relative to the one hour standard (i.e., 60 minutes), SBC Illinois has not exceeded an average time of over 8 minutes in any one month.<sup>15</sup> A compromise is proposed by MCI in connection with PM 101. MCI is willing to accept the deletion of PM 100, if the benchmark for PM 101 is not increased to three hours, and its status as a remedied PM is maintained. MCI Comments at 5.

With respect to PM 101 (Percent Out of Service <60 Minutes), SBC Illinois proposes to delete it because it is duplicative of PM 100. SBC PM Comments at 6-8; Ehr PM Affidavit at ¶¶ 22-24. PM 101 measures the same event captured in PM 100 (the time between receipt of the NPAC message and the time the port is activated). Ehr PM Affidavit at ¶ 23. Whereas PM 100 gauges the average time for completing this activity (LNP conversion) against a one hour benchmark, PM 100 assesses the percentage of LNP conversions that occur in less than one hour (60 minutes). *Id.* In the alternative, SBC Illinois proposes that both PM 100 and PM 101 be retained, but that PM 101 no longer be designated a remedied PM. SBC Illinois contends that it is inappropriate to report the same performance under two separate measures, and even more inappropriate to have penalties for both PMs. This creates the potential for

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<sup>15</sup> The highest month, October 2003, reported an average time out of service of 7.36 minutes.

multiple or duplicative penalties. See SBC PM Comments at 6-7; Ehr PM Affidavit at ¶¶ 22-24.

Staff is sensitive to claims of multiple or duplicative penalties for the same activity, and notes that the activity measured in PM 100 is very similar to that measured in PM 101. Staff also interprets MCI's willingness to drop PM 100 in favor of PM 101, as an indication that the two PMs are interrelated to the point of being at least partially duplicative. Staff recommends that the Commission keep PM 101 with its current 60 minute standard, but delete PM 100 due to the duplicative nature of these PMs. The criteria of review is that a PM can be deleted or changed if it is duplicative of another measurement. PM 100 is duplicative of PM 101 because both PMs measure whether LNP conversions exceed 60 minutes. PM 100 measures average LNP activation time and has a benchmark of 60 minutes, while PM 101 measures the percentage of LNP conversion completed in less than 60 minutes. In effect, the same failure triggers both PMs. Staff further recommends that PM 101 be maintained as a Remedied PM.

**Disputed PM Issue 5: Whether PM 113 (Percentage of Electronic Updates that Flow Through the Update Process Without Manual Intervention) Should be Deleted**

PM 113 assesses the percentage of updates to the Directory Assistance Database ("DA Database") that are handled electronically. SBC Illinois contends that PM 113 is duplicative of PMs 110 and 112, and since it is duplicative, SBC Illinois is paying unlawful remedies. Moreover, SBC Illinois argues that the high level of performance supports their proposal to delete PM 113. See SBC PM Comments at 8-9; *see also* Affidavit of James D. Ehr at ¶¶ 25-31.

MCI argues that manual handling should be minimized to assure CLECs that SBC Illinois properly loads information into the DA Database. Moreover, MCI argues that SBC Illinois has not supplied any valid reason for asserting that this metric is no longer necessary. See MCI Comments at 5-6.

Staff recommends that the Commission delete PM 113 because it is duplicative of PM 110 and 112. One of Staff's primary concerns on a going forward basis is that if a problem in wholesale service arises, that the problem be identifiable through the PMs so it can be corrected. If PM 113 is deleted, problems with electronic updates of the DA Database can still be identified, and corrected, by comparing PMs 110 and 112.

PM 110 assesses the timeliness of the DA Database updates, and captures both manual and electronic updates. PM 112 assesses the quality of manual updates made to the DA Database, since it reports the number of manually-handled updates that are processed without error as a percentage of the total updates that require manual intervention. As stated above, PM 113 reflects SBC Illinois performance in processing electronic updates, by tracking the percentage of electronic updates that flow through the DA update process. The benefit of having the three PMs is that PM 110 would identify if there is an overall problem with updating the DA Database, and PM 112 and PM 113 allow CLECs, Staff and SBC Illinois to determine whether a problem exists with either manual handling of updates or electronic handling of updates, respectively. If PM 113 is deleted Staff, CLECs and SBC Illinois would still be able to identify an electronic update problem by comparing PMs 110 and 112. For example, if the performance measured by PM 110 (manual updates + electronic updates) drops, and the performance measured by PM 112 (manual updates) does not drop, then logically the

drop was caused by a problem with electronic updates, which are measured by PM 113. This logic falters if the drop in PM 110 performance is due to a drop in the service measured by both PM 112 and PM 113. Based on actual performance, Staff believes there is little likelihood that there will be a drop in performance with respect to electronic updates.

There is a less likelihood Staff of a drop in performance of SBC Illinois' electronic updates than SBC Illinois manual updates. Staff reviewed the most recent six months of PM 113 performance data from SBC Illinois' CLEC Online website, and it indicates that SBC Illinois' performance has not been below 99.85% from October 2003 through March 2004. See Attachment 3. Generally, if there is a trend of the ILEC providing at least three months of adequate performance with respect to a PM, there is less potential for a drop in performance. In addition, PMs that measure manual services/operations are harder to meet on a consistent basis than PMs that measure established electronic services/operations, since there is greater variability in manual services/operations. Thus, Staff is less concerned about fluctuations in performance measured by PM 113, than that measured by PM 112. Thus, PM 113 should be deleted because it is duplicative of two other PMs – 110 and 112 – which together will still allow CLECs and SBC Illinois to identify an electronic update problem if it arises.

**Disputed PM Issue 6: Whether the scope of PM 117 (Percent NXXs Loaded and Tested Prior to the LERG<sup>16</sup> Effective Date) should be expanded**

MCI proposed several revisions to PM 117, including:

- Expanding the definition of PM 117 to include “rehomes” of NXX’s (an NXX is the first three digits of a seven digit telephone number that identifies the specific central office that serves the number);
- Modifying the business rules to address “rehomes<sup>17</sup>”;
- Altering the calculation methodology to include testing, unless the CLEC makes testing impossible. See MCI Comments at 6-7; see *a/so* MCI Exhibit 1.

SBC Illinois opposes MCI’s proposed changes, indicating that the process for rehoming NXX’s is distinctly different than that for the implementation of a new NXX, and notes that the business rules for PM 117 specifically refers to “the initial NXX(s)...” therefore, the intent is that the PM is to only apply to new code activations. Additionally, SBC Illinois states that the test and load of new codes are infrastructure functions that are planned and managed as one activity. SBC Illinois argues that MCI’s suggestion, that loadings completed by the LERG date comply with the standard even though testing has not occurred, is impractical since NXXs may not be loaded without testing. See SBC PM Comments at 9-10; see *a/so* Affidavit of James D. Ehr at ¶¶32-34.

Staff recommends that the Commission leave PM 117 unchanged because MCI did not show that the PM does not capture or does not properly measure, the intended

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<sup>16</sup> LERG is an acronym for “Local Exchange Routing Guide.” A LERG is a Bellcore document which lists all North American central offices or end offices, and describes their relationship to tandem offices.

<sup>17</sup> A “rehome” is when a customer’s local loop termination is moved from one central office wire center to another. This generally involves the retermination of private line facilities.

performance. This is a modification of an existing measurement, therefore MCI needs to show that “there exists an omission or failure to capture intended performance”, or “that it is duplicative of another measurement.” See *supra* §II. Staff has reviewed the business rule section of PM 117 and it specifically refers to “initial” NXXs, and not “rehomed” NXXs. A “rehomed” NXX is not an “initial” NXX because it involves moving a customer from an existing switching arrangement to a new switching arrangement, and establishes the necessary facilities. In addition, Staff agrees with SBC Illinois’ statement that the loading and testing functions are performed as one activity, and it is inappropriate to separate them for performance measure purposes.

Moreover, the infrequency in which NXXs are loaded shows that this is a nascent PM. The activities measured by PM 117 are sporadic at best. Staff’s review of PM 117 data that is posted on SBC Illinois’ CLEC Online website indicates that there have only been 2 NXXs loaded and tested in the period from October 2003 through March 2004.<sup>18</sup> See Attachment 4. Accordingly, MCI’s proposal would not “capture the intended performance” because it is not within the intent of the performance measure, and it appears to be a nascent PM.

**Disputed PM Issue 7: Whether the scope of PM 118 (Average Delay Days for NXX Loading and Testing) should be expanded**

MCI proposes to revise PM 118 similar to what it proposed for PM 117. See *supra*, Disputed Issue 6. Specifically, MCI proposes that the business rules for PM 118 include NXX rehomes and the separate loading and testing measures. See MCI Comments Exhibit #2.

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<sup>18</sup> In both instances, SBC Illinois met the required loading and testing date.

SBC Illinois opposes the changes for the same reasons it provided with respect to PM 118. See SBC PM Comments at 10; see *also* Affidavit of James D. Ehr at ¶¶35-37.

Staff recommends that the Commission leave PM 118 unchanged for similar reasons set forth in Disputed Issue 7 -- MCI did not show that the current PM 118 fails to capture the intended performance, and the service to be measured appears to be nascent. The original language in PM 118 does not include rehomes, therefore this PM was not intended to capture such performance. In addition, Staff's review of SBC Illinois' CLEC On-Line website found that there were no reported instances of late orders for NXXs loading and testing in PM 118 for the period October 2003 through March 2004. Therefore, such a service appears to be nascent. Since the changes are outside the intended scope of performance of PM 118, and it appears to be nascent, the scope of PM 118 should not be expanded. The changes to PMs 117 and 118, however, are probably significant enough to warrant discussions in the fourth collaborative of creating a new PM to capture such performance.

**Disputed PM Issue 8: Whether PM CLEC BLG-4 (Accuracy of Rate Table Updates) should be reclassified as a Remedied PM**

MCI proposes that PM CLEC BLG-4 be changed from a diagnostic PM to a remedied PM. MCI indicates that it is critical that this measure be remedied in light of the several billing accuracy issues raised by CLECs in SBC Illinois' 271 proceeding. Because billing issues consume tremendous CLEC resources to correct, the remedies should be high and the standard set at 98% accuracy. See MCI Comments at 8-9.

SBC Illinois opposes the addition of remedies to this diagnostic measure, and contends that any remedy at this time would be based on an arbitrarily developed standard and remedy. Moreover, it would be contrary to the practice of the PM collaborative, since new PMs have typically been implemented as Diagnostic and not Remedied. See SBC PM Comments at 11; see *also* Affidavit of James D. Ehr at ¶¶38-41.

Staff recommends that the Commission reject MCI's proposal to reclassify PM CLEC BLG-4 a remedied PM, because it is nascent. This is reflected by the insufficient information, or volume of data points, to set a benchmark. . Staff checked CLEC Online and was unable to locate any performance information regarding PM CLEC BLG-4. Accordingly, it is very difficult for Staff to advocate a particular level of performance (e.g., 98%), which would be necessary prior to the implementation of remedies. The practice of the collaborative has been to capture some interval of data, such as 6 months, prior to developing benchmarks. This reliance on actual data provides a "sanity check" to any theoretical measure. Basing a standard on actual data taken over an interval of time allows that benchmark to reflect a reasonable level of performance that SBC Illinois is capable of providing CLECs, consistent with its obligation under the Telecommunications Act of 1996. Staff also agrees that billing measures are important, and would be inclined to support remedies for key billing measures once an acceptable benchmark was established. Staff would prefer to see the next six month PM collaborative address whether this should be a remedied PM. In the meantime, keeping CLEC BLG-4 as a diagnostic measure, and collecting PM data over the next six months is the most prudent course.



**Disputed PM Issue 9: Whether PM CLEC BLG-5 (Rate Table Correction Timeliness) should be reclassified as a Remedied PM**

Similar to Disputed PM Issue 8, MCI indicates that in light of the several billing accuracy issues raised by CLECs in SBC Illinois' 271 proceeding, it is critical that this measure be reclassified as a remedied PM. In addition, MCI states that the standard should be set at 100%, because billing issues consume tremendous CLEC resources to correct. See MCI Comments at 9.

SBC Illinois opposes the reclassification of PM CLEC BLG-5 from a diagnostic PM to a remedied PM. SBC Illinois contends that any remedy at this time would be arbitrary and contrary to the practice of the PM collaborative. See SBC PM Comments at 11-12; see *also* Affidavit of James D. Ehr at ¶¶42-44.

Staff recommends that the Commission deny MCI's request to reclassify PM CLEC BLG-5 as a remedied PM because it is nascent. Similar to CLEC BLG-4, Staff checked SBC Illinois' CLEC Online website and was unable to locate any performance information regarding PM CLEC BLG-5. Accordingly, it is very difficult for Staff to advocate a particular level of performance (e.g., 100%), which reflects a reasonable level of performance that SBC Illinois is capable of providing CLECs prior to the implementation of remedies. The practice of the collaborative has been to capture some interval of data, such as 6 months, prior to developing benchmarks. As stated above, billing measures are important, and Staff would be inclined to support remedies for key billing measures once an acceptable benchmark was established. Staff would prefer to see this issue addressed in the next six month PM collaborative.

**Disputed PM Issue 10: Whether a New Billing Accuracy PM Should be Added**

MCI proposes the creation of a new Billing Accuracy performance measure that will assess billing accuracy by determining the percent of total billed amount resulting from adjustment activity. MCI asks that the Commission either adopt MCI's metric proposal, TDS Metrocom's proposal, or, at the least, implement SBC California's PM 34 in place of SBC Midwest's PM 14 without the excessive exclusions SBC proposes. See MCI Comments at 11-12; see *also* MCI Exhibits 3 and 4.

SBC Illinois notes that MCI and TDS Metrocom are proposing new, comprehensive billing accuracy performance measures, although SBC Illinois is unclear about the specific proposals or the implementation schedule. SBC Illinois states that the issue originated in the billing collaborative, and was also raised in the third six-month PM collaborative where issues of calculation methodology and exclusions were discussed. SBC indicates that it has continued to conduct research and perform systems development work, expediting implementation when agreement is reached. SBC Illinois expects such agreement in the upcoming fourth six month PM collaborative. See SBC PM Comments at 17-19; see *also* Affidavit of James D. Ehr at ¶¶60-64; see *also* Ehr PM Billing Affidavit at 19-20.

Staff recommends that the Commission not order the implementation of this new billing accuracy measure at this time because SBC Illinois is making changes to its network. Staff is inclined to agree that the proposed billing PM is not yet ready for implementation, because it is logical that SBC Illinois will have to assess its systems and their capabilities, relative to the systems and capabilities of SBC California. Since they are from different RBOCs, the underlying systems and information reported may be

quite different. However, Staff anticipates that this issue will be fully developed and will be addressed in the fourth PM collaborative.

**Disputed PM Issue 11: Addition of a performance measure to assess Repeat Billing Disputes**

TDS Metrocom proposed this issue, but did not file comments supporting their position. MCI indicates it does not oppose the issue, but did not raise the issue due to other, higher priority issues.

SBC Illinois opposes the implementation of a performance measure, indicating that it has already agreed to two PMs that measure the process where billing exceptions would occur. Additionally, the ultimate implementation of a comprehensive billing PM will also eliminate the need for this PM.

Given the lack of support from TDS Metrocom, and SBC's contention that the proposed PM is largely redundant, this issue should be denied due to the lack of supporting evidence.

**Disputed PM Issue 12: Whether a PM to Assess Back Billing should be added**

TDS Metrocom proposed this issue in the collaborative, but did not file testimony in this docket. Since no party is proposing this change, or has submitted language that could be inserted in to the business rules, this issue should be denied due to the lack of supporting evidence.

**Disputed PM Issue 13: Whether a PM to assess Billing Disputes Finalized in 90 Days should be Added**

McLeodUSA made the proposal, but did not file comments supporting their position, nor did they file language for the proposed PM to be included in the business rules. Since no party is proposing these changes, or has submitted language that could be inserted in to the business rules, this issue should be denied due to the lack of supporting evidence.

**Disputed PM Issue 14: Whether a PM to assess the Percent of Open SBC Midwest CLEC Impacting OSS System/Software Defect Reports (DRs) and Change Requests (CRs) Created Per DRs Resolved within “X” Days should be Added**

Disputed PM Issue 14 was proposed by Choice One, MCI and McLeodUSA in the collaborative meetings, however only MCI raises it as an issue in this proceeding. MCI contends that CLECs are finding that SBC Illinois’ commitments to resolve software defects in a timely manner have not been met. MCI contends that CLECs are reluctant to move to new software versions, fearing that they will not be able to retain the same functionality, may be forced to perform “workarounds,” and may cause certain order activities to drop out of the metrics. MCI refers to a recent defect report issued by SBC Illinois that shows 125 open defects (MCI Comments, Exhibit 5), a significant portion of which have lingered since the August-December 2003 timeframe. CLECs also experience problems caused by “releases changed [by SBC Illinois] from a defect report to a change request.” MCI Comments at 15. MCI proposes a new PM, and claims the Commission should impose a large Tier 2 remedy. See MCI Comments at 14-15; see *also* MCI Exhibits 5, 6 and 7.

SBC Illinois responds that the issue has been discussed at length, and several proposals were submitted in the last six month PM collaborative. SBC Illinois indicates it did make some changes to PM 124, but the issue wasn't resolved. SBC Illinois says that MCI's PM proposal is a measurement of resolution timeliness for defect reports ("DRs") and change requests ("CRs"), and that the CLECs seek to impose a measurement on the change management process ("CMP") outside of the CMP forum. SBC Illinois also notes that it is already subject to remedies when it fails to meet performance standards as a result of OSS defects, and that failure to meet an arbitrary deadline does not necessarily mean that CLECs are adversely impacted. Additionally, SBC Illinois questions how an arbitrary date for resolving defects will be chosen, as well as how it can be determined that the timing of an OSS change is CLEC impacting. See SBC PM Comments at 19-22; see *also* Affidavit of James D. Ehr at ¶¶65-73.

Staff recommends that the Commission order the creation of the diagnostic PM that is proposed by MCI in its Exhibit 7 because the current PMs fail to capture this performance. This is one of the more difficult issues in this proceeding. On one hand, it is clearly appropriate for CLECs to be informed about their defect reports and change requests, and whether SBC Illinois is handling them in an effective and expeditious manner. In addition, it is inappropriate for SBC Illinois to "relabel" defect reports as change requests. On the other hand, it is appropriate for SBC Illinois to maintain responsibility for the management and operations of its own OSS systems, and prioritizing internal data processing resources is not an easy task in this rapidly changing telecommunications environment.

Nonetheless, a diagnostic measure should be created similar to the proposed PM contained in MCI Exhibit 7. The timely resolution of defect reports (e.g., by negotiated target date) and timely resolution of approved change requests (e.g., again by negotiated target date) is in the interest of the developing a competitive telecommunications environment in Illinois. Such a PM is important because CLECs need to be able to develop business plans, and those plans require an understanding of SBC Illinois OSS system capabilities. If a CLEC does not know whether or not system enhancements are going to be performed, per a negotiated target date, it is impossible for the CLEC to make plans that are reliable. Parties should be aware that Staff is open to reassessing its position in the next six month review if the recommended PM continues to show very little activity.<sup>19</sup> Finally, making this a diagnostic PM is appropriate to collect data from which a benchmark can be developed.

**Disputed PM Issue 15: Whether a performance measure to assess the Percent of Change Requests Implemented Within 60 Weeks of Prioritization should be Added**

MCI proposes this PM in order to increase SBC Illinois' extremely slow implementation of CLEC change requests. MCI claims that SBC has not shown any improvement since its Midwest 271 applications were granted. See MCI Comments at 16-17; see *a/so* MCI Exhibit 8.

SBC Illinois opposes the implementation of a performance measure for Percent of Change Requests Implemented Within 60 Days, describing it as having the same

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<sup>19</sup> Staff notes that in the current PM 124, there has only been 1 transaction reported in the period from October 2003 through March 2004. If it turns out that this is an inherently low volume PM, it may be that issues related to change requests and defect reports are more appropriately addressed in another manner, such as a formal complaint.

flaws as the proposed PM in Disputed PM Issue 14, as well as the following concerns. SBC Illinois believes this proposed PM is a thinly veiled attempt to have all CLEC-initiated and prioritized change requests implemented, regardless of value to the industry or cost to SBC Illinois. Additionally, it is impractical to expect SBC Illinois to implement all CLEC-initiated change requests because CLECs do not always agree on what OSS functionalities they want. See SBC PM Comments at 23-24; *see also* Affidavit of James D. Ehr at ¶¶74-83.

Staff recommends that the Commission reject MCI's proposal to implement a new PM -- "Percent of Change Requests Implemented Within 60 Weeks of Prioritization" -- since the diagnostic PM from Disputed PM Issue 14 offers a better opportunity to capture SBC Illinois' performance relative to change request implementation. It is not apparent to Staff that MCI's PM proposal, as set forth in MCI Exhibit 8, would require SBC Illinois to implement all CLEC submitted change requests. However, Staff has very real concerns about what information MCI's proposed PM would report,<sup>20</sup> and is inclined to believe that the diagnostic PM from Disputed PM Issue 14 is a better PM

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<sup>20</sup> Staff has no basis on which to determine that 60 weeks is an appropriate interval for change requests. Staff is also concerned that this PM might encourage an RBOC to prioritize smaller scale data processing change requests in order to meet an arbitrary benchmark of 98%.

**Disputed PM Issue 16: Whether PM 124 (Timely Resolution of Significant Software Failures Related With Releases) should be Deleted and Replaced with PM 124 (Measurement of Orders Effected By Software Defects Not Resolved Within 48 Hours)**

Forte proposes PM 124 be replaced because of the impact of orders that are invalidly rejected by SBC Illinois' systems. Forte contends that when an order is invalidly rejected, the CLEC must spend time determining whether the order was properly formatted, correct, and valid as sent. Forte contends that it is not compensated by SBC Illinois for this extra work, and that CLECs have been experiencing this problem for several years. Forte includes Exhibit A, outlining its proposed changes to PM 124. See Forte Comments at 1-2.

SBC Illinois opposes the measurement of the number of orders rejected due to OSS errors as a replacement for the currently effective performance measure. Effectively, SBC Illinois offers its proposal in Exhibit 9 as a solution to Disputed Issues 14, 15, and 16. See SBC PM Comments at 24-25; see *also* Affidavit of James D. Ehr, Exhibits JDE 7 and 8.

Staff recommends that the Commission order the changes to PM 124 contained in SBC Illinois' Exhibit 9 since PMs 14 through 16 do not capture the same performance measured by the revised PM 124, however Staff does not accept it in place of the PMs proposed in Disputed Issues 14, 15 and 16. Staff still stands by the recommendations set forth above.

SBC Illinois' proposed edits to PM 124, as outlined in Exhibit 9, are valuable and will provide information regarding the number of valid orders actually rejected when the defect was not resolved within 48 hours. Measuring such performance will help the



Commission better understand the extent of the problem Forte describes. However, SBC Illinois' proposed PM 124 will not address all of the issues from Disputed PM Issues 14, 15, and 16. SBC Illinois' proposed PM 124, for example, will not directly address change requests or defect reports, such as the PM proposed by MCI in Issue Number 14, nor the percentage of change requests implemented within a certain interval, as proposed by MCI in Issue Number 15. Staff still believes PM's, similar to the PM proposed by MCI in Disputed PM Issue 14, need to be developed or current PM's modified, to properly capture/measure whether SBC Illinois processes defect reports and change requests in a timely manner or fashion.

#### **IV. Disputed Billing Issues**

##### **Billing PM Issue 1: Disputed Billing Issue 1: Whether PM CLEC BLG-2 Should be Reclassified as a Remedied PM; and What should be the Benchmark for PM CLEC BLG-2**

Performance measure CLEC BLG-2 (Percent of Billing Claims Acknowledged within 5 Business Days) has been agreed to for implementation by SBC Illinois, and will track SBC Illinois' timeliness in providing CLECs with acknowledgement that SBC Illinois received and is processing billing claims submitted by CLECs. Ehr Billing PM Affidavit at ¶¶ 6-7. Although SBC Illinois has agreed to implement this measure, it has not agreed to apply a performance standard or to make PM CLEC BLG-2 a remedied performance measure at this time. *Id.* at ¶ 7. SBC Illinois asserts that it would be inappropriate to apply a performance standard or to apply remedies to this measure for the following reasons:

- The system changes and corresponding processes being put in place to implement this PM are not expected to be implemented until the first quarter 2004;
- Whether or not SBC Illinois notifies a CLEC that its billing dispute claim has been received and is being processed within 5 days has no significant competitive impact;
- The time frame in which it takes SBC Illinois to provide an acknowledgement of a billing dispute has no end-user impact; and
- The acknowledgement notification interval time period measured in this PM is accounted for in PM CLEC BLG-3.

Ehr Billing PM Affidavit at ¶ 7.

MCI indicates that while the parties have agreed to PM CLEC BLG-2, there is a lack of agreement on the benchmark, as well as the application of remedies for SBC Illinois' non-performance. MCI Comments at 17. MCI proposes that SBC Illinois comply with the PM 95% of the time. *Id.* If SBC Illinois does not provide acknowledgement of a billing claim, MCI claims that they do not know whether SBC Illinois is working on its claims or if SBC Illinois needs more information. In addition, MCI proposes that this become a remedied PM because SBC Illinois should be given an incentive to improve its performance. *Id.* Moreover, MCI emphasizes the critical importance of billing issues and therefore the need for billing claims to be expeditiously processed by SBC. *Id.*

SBC Illinois contends that the system changes and processes are yet to be implemented, the measure provides no competitive impact, and the measure is a subprocess of PM CLEC BLG-3. Since PM CLEC BLG-2 is a subprocess of PM CLEC BLG-3, failure of one could also be reflected in the other, resulting in duplicative remedies. See SBC Billing PM Comments at 2-3; see *also* Ehr Billing PM Affidavit at ¶¶8-10.

Staff recommends that the Commission order the implementation of PM CLEC BLG-2 as a diagnostic measure, with no benchmark. Such a result avoids duplicative remedies consistent with applicable criteria, while allowing for the development of additional relevant data to develop an appropriate benchmark. The appropriate benchmark should be determined in the fourth six month PM collaborative.

**Billing PM Issue 2: Whether Remedy Payments should be Deferred for PM CLEC BLG-3**

MCI notes that while a benchmark and remedy have been agreed-to, the application of remedy payments has been deferred for six months. MCI argues that because billing problems are not new, there is no reason to defer the implementation of remedy payments for a PM that requires SBC to resolve a claim in 30 days. MCI believes that remedies should be immediately applied at the highest level and no cap because, while PM CLEC BLG-3 does not provide an incentive for SBC Illinois to send out an accurate bill, it does encourage SBC Illinois “to respond to CLEC claims in a timely manner with either (1) an agreement to credit bills and when or (2) a clearly explained denial for the CLEC to escalate if it disagrees.” See MCI Comments at 17-18.

SBC Illinois refers to the deferment of payments as a diagnostic period, and argues that such a period is necessary because SBC Illinois will be rolling out an entirely new process for handling and tracking billing claims that was developed through collaborative discussions with CLEC participants. See SBC Billing PM Comments at 3; see *also* Ehr Billing PM Affidavit at ¶¶ 13-15.

Staff recommends that the Commission order a six month diagnostic period prior to the inception of remedies for PM CLEC BLG-3. The criteria set forth in the remedy

plans do not appear relevant to this issue. The criteria require a change to be justified by a showing that there is an omission or failure to capture a certain performance, or that the measurement is duplicative of another measurement. Whether a PM is remedied (or the schedule for implementation of remedies) does not directly impact whether that PM captures intended performance. There appears to be no claim that PM CLEC BLG-3 is duplicative of another measure. Therefore, in addressing the arguments of MCI and SBC Illinois, the criteria in the remedy plans to not appear applicable.

Staff believes that a six month diagnostic period for PM CLEC BLG-3 is appropriate. It has been the practice of the six month PM collaborative to allow a period of time (e.g., six months) prior to remedy inception to provide for implementation and to function as a “sanity check” on the remedy amount.

**Billing PM Issue 3: Whether the Provision that allows SBC Illinois to terminate Tier 1 Payments to a CLEC should be deleted**

Currently, CLEC BLG-3 allows SBC Illinois to deny Tier 1 remedy payments to a CLEC if that CLEC has a denied claim rate of 30% or greater for three consecutive months. See SBC Billing PM Comments at 3. A “claim rate” refers to the number of billing problems identified by a CLEC which are not found to have merit, divided by the total number of billing problems identified by the CLEC. If a “claim rate” percentage becomes very high, it is possible that a CLEC is not adequately investigating its billing problem claims. MCI does not believe that Tier 1 remedies should be denied to CLECs with a denied claim item rate of 30% or greater for three consecutive months. MCI contends that the CLECs have no incentive to file false billing claims, and the burden

should not be placed on CLECs to prove that their claims were valid in the first place. MCI also notes that third party audits would never provide an opinion on whether SBC Illinois' rejections were valid. See MCI Comments at 18-20.

SBC Illinois contends that there is no evidence that it would fraudulently deny claims in order to meet a performance standard, and that the damage to SBC Illinois' corporate reputation and SBC Illinois' relationship with regulators would far outweigh any benefit in avoided remedy payments. Regarding this PM, SBC Illinois is concerned that one CLEC sending large numbers of claims without merit could impact SBC Illinois' ability to respond to billing claims from all CLECs, in a timely fashion. Such inappropriate action by one CLEC would potentially cause SBC Illinois to owe remedies to other CLECs when SBC Illinois is unable to meet the new standards of PM CLEC BLG-3. In effect, SBC Illinois is simply proposing a safeguard to prevent CLECs from submitting meritless claims. See SBC Billing PM Comments at 3-4; see *also* Ehr Billing PM Affidavit at ¶¶16-18.

Staff recommends that the Commission eliminate the requirement in PM CLEC BLG-3 that would exempt SBC Illinois from paying Tier 1 remedies to those CLECs who have a denied claim rate of 30% or greater for the most recent 3 months. This is another instance in which the criteria of review set forth in the remedy plans readily applicable to the issue at hand. This issue involves a condition of payments that is a subset of how CLEC BLG-3 is paid, and not related to the performance being measured. The criteria provide no real guidance for this issue. Therefore, in performing its analysis and making a recommendation, Staff is not limited to consideration of the criteria set forth in the remedy plans.

Staff believes that this dispute reflects, more than any of the other PM or billing disputes, a basic lack of trust between SBC Illinois and the CLEC community. Both sides assume, or so Staff infers from their comments, that the other will consciously act in bad faith, or “game the system.” The CLEC community believes SBC Illinois will, in order to avoid penalties, hold or even reject billing claims. SBC Illinois believes that the CLEC community will submit so many baseless billing claims that it will impact SBC Illinois’ ability to appropriately respond to legitimate billing claims. Staff does not believe the PM program can be designed to capture bad faith. Staff believes that SBC Illinois has information enabling it to identify when another party appears to be acting in bad faith. Accordingly, Staff believes that if SBC Illinois believes that a CLEC is submitting an unusual number of baseless billing claims, SBC Illinois should originate a complaint case with this Commission to seek appropriate relief. Similarly, if a CLEC believes SBC Illinois is inappropriately rejecting or holding a high number of its billing claims, the CLEC has the ability to originate a complaint case with the Commission. In short, Staff does not believe PMs can or should be designed to attempt to capture instances of bad faith by either party.

**Billing PM Issue 4: Whether the interval of time used in the standard for PM 17.1 (Post to Bill Notification Timeliness) should be set at 5 days or 8 days**

PM 17.1 is a new PM that SBC Midwest proposed in the collaboratives. Everyone agreed to implement this new PM, except that MCI wants the same standard that is used by SBC Southwest. The interval SBC Southwest uses for PM 17.1 is 5 days, and SBC Illinois is proposing 8 days.

MCI proposes that SBC Illinois implement the same PM 17.1 standard that SBC Southwest implemented in Texas – 95% performance within five days. MCI believes that SBC Illinois' inability to agree to this standard suggests that SBC Illinois' fundamental problem is somehow linked to the legacy Ameritech billing system -- ACIS. MCI asserts that the longest interval used by other RBOCs for this PM is five days. Other ILECs, notably Verizon and Qwest, respond within two days. See MCI Comments at 21-22.

SBC Illinois indicates that as a result of additional discussions, SBC Illinois and all CLECs other than MCI have agreed to (a) implement a new PM 17.1 with a benchmark of 95% within eight days, that would be a remedied PM, and (b) reclassify the current PM 17 from a remedied to a diagnostic PM. SBC Illinois believes MCI's position should be addressed through the change management process. SBC Illinois also believes MCI is proposing standards for PMs that it knows to be unattainable without re-architecture of the billing OSS. See SBC Billing PM Comments at 4-5; see *also* Ehr Billing PM Affidavit at ¶¶20-25.

Staff recommends that the Commission adopt SBC Illinois' proposal since the intended performance to be captured should be a level of performance a system is capable of providing, consistent with its obligation under the Telecommunications Act of 1996. Staff – like the Parties – has no basis to question that SBC Illinois' OSS systems are unable to perform at a five day rate, yet notes that the FCC has deemed SBC Illinois' systems to be 271 compliant. Accordingly, Staff believes MCI should pursue OSS enhancement through the change management process, and that SBC Illinois

should (a) implement a new PM 17.1 with a benchmark of 95% within eight days, with a remedy and (b) revise the current PM 17 from a remedied to a non-remedied PM.

**Billing PM Issue 5: Whether a PM to diagnostically report (measure) the percentage of claims denied each month by SBC Illinois for CLEC aggregate/individual should be added**

MCI contends a new PM is needed so that SBC Illinois will report on the number of claims it denies each month. MCI claims that this new PM will enable CLECs and regulators to more easily monitor whether PM CLEC BLG-3 is providing an incentive for SBC Illinois to reject billing claims rather than research them, as the former is faster. MCI notes that the new PM would be a diagnostic measure so it would not encourage CLECs to file more claims. See MCI Comments at 23-24.

SBC Illinois has determined that it could agree to provide a report, upon CLEC request, providing the percent of denied claims to that individual CLEC. However, SBC Illinois opposes the development of an additional PM, or any burdensome reporting requirement. See SBC Billing PM Comments at 5; see *also* Ehr Billing PM Affidavit at ¶¶27-28.

Staff believes that this issue is similar in nature to Disputed Billing Issue 3, in that the genesis of the measure appears to be a fundamental distrust between the parties. MCI contends that a new PM is needed so that SBC Illinois will report on the number of claims it denies each month to enable CLECs and regulators to more easily monitor whether PM CLEC BLG-3 is providing an incentive for SBC Illinois to reject billing claims rather than research them. MCI Comments at 23. Staff does not believe that a high percentage of rejected billing claims necessarily means that SBC Illinois is



inappropriately responding to incentives from PM CLEC BLG-3. It is possible that SBC Illinois is properly rejecting inappropriate billing claims, although the evidence supporting such a proposition is lacking. The applicable criteria require the Commission to assess whether there exists an omission or failure to capture intended performance. Staff believes that the formal complaint process is the only manner in which issues of bad faith can be “peeled back” to discern the genesis of the problem. Thus, Staff is of the opinion that MCI has not demonstrated that it is possible to capture the intended performance through its proposed PM. Accordingly, Staff recommends that the Commission deny MCI’s request to create a new diagnostic measure.

## **V. Conclusion**

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in this proceeding.

Respectfully submitted,

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*Counsel for the Staff of the  
Illinois Commerce Commission*

May 19, 2004

**Measure:** 13 - Order Process Percent Flow Through      **State:** IL

Ordering									
Order Process % Flow Through - UNE-P									
All CLECS									
	Market Area	# Orders That Flow Through	Total Eligible Electronic Orders	% Order Flow Through	Retail	Benchmark	Z-Value	Affiliate	Z-Value Comparison
Oct-03	ALL	145,800.00	149,500.00	97.56 %	97.02 %		- 11.390		Retail
Nov-03	ALL	114,200.00	116,400.00	98.08 %	97.93 %		- 3.330		Retail
Dec-03	ALL	123,900.00	127,000.00	97.56 %	98.08 %		12.450		Retail
Jan-04	ALL	131,500.00	133,200.00	98.76 %	98.17 %		- 15.400		Retail
Feb-04	ALL	109,889.00	110,658.00	99.31 %	98.20 %		- 27.123		Retail
Mar-04	ALL	124,529.00	125,730.00	99.04 %	97.73 %		- 30.429		Retail

Docket 03-0769  
Attachment 1  
ICC Staff Ex. 1.0  
(McClerren)

Performance Measurements (SBC)

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**Measure:** 100 - Average Time of Out of Service for LNP Conversions      **State:** IL

LNP									
Avg Time of Out of Service for LNP Conversions (Min)									
All CLECS									
Market Area	Sum(LNP Stop Time - LNP Start Time)	Total LNP Activated TNS	Avg Time of Out of Service for LNP Conversions	Retail	Benchmark	Z-Value	Affiliate	Z-Value Comparison	
Oct-03 ALL	56,450.00	7,669.00	7.36		60.00	- 52.640			
Nov-03 ALL	54,730.00	7,753.00	7.06		60.00	- 52.940			
Dec-03 ALL	11,980.00	10,440.00	1.15		60.00	- 58.850			
Jan-04 ALL	1,544.00	4,524.00	.34		60.00	- 59.660			
Feb-04 ALL	4,872.63	8,534.00	.57		60.00	- 59.429			
Mar-04 ALL	4,174.88	7,856.00	.53		60.00	- 59.469			

Docket 03-0769  
Attachment 2  
ICC Staff Ex. 1.0  
(McClerren)

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**Measure:** 113 - % of Electronic Updates that Flow Through the Update Process w/out Manual Intervention      **State:** IL

Directory Assistance Database									
% of Electronic Updates that Flow Through the Update Process w/out Manual Intervention									
All CLECS									
	Market Area	# of Updates That Flow Through to ALPS or DA	Total Updates	% of Elec Updts That Flow Thru w/o Manual Intrvntn	Retail	Benchmark	Z-Value	Affiliate	Z-Value Comparison
Oct-03	ALL	17,230.00	17,250.00	99.91 %	1.00		- 6.516		Retail
Nov-03	ALL	21,190.00	21,220.00	99.86 %	1.00		- 5.749		Retail
Dec-03	ALL	25,730.00	25,750.00	99.95 %	1.00		- 7.567		Retail
Jan-04	ALL	13,550.00	13,570.00	99.85 %	1.00		- 4.578		Retail
Feb-04	ALL	16,048.00	16,062.00	99.91 %	1.00		- 6.826		Retail
Mar-04	ALL	20,478.00	20,500.00	99.89 %	.99		- 8.172		Retail

Docket 03-0769  
Attachment 3  
ICC Staff Ex. 1.0  
(McClerren)

Performance Measurements (SBC)

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**Measure:** 117 - Percent NXXs Loaded and Tested Prior to the LERG Effective Date      **State:** IL

NXX										
% NXXs Loaded & Tested Prior to the Effective Date										
All CLECS										
Market Area	# of NXXs Loaded & Tested by Effective Date	Total NXXs Loaded & Tested	% NXXs Loaded & Tested by Effective Date	Retail	Benchmark	Z-Value	Affiliate	Z-Value Comparison		
Oct-03										
Nov-03	ALL			100.00 %						
Dec-03	ALL	1.00	100.00 %	100.00 %						
Jan-04										
Feb-04										
Mar-04	ALL	1.00	100.00 %							

Docket 03-0769  
Attachment 4  
ICC Staff Ex. 1.0  
(McClerren)

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**Measure:** 124 - Timely Resolution of Significant Software Failures Related with Releases      **State:** IL

BFR									
Timely Resolution of Significant Software Failures Related with Releases									
Per 2002 Six Month Review: New PM, eff w/ April '03 results reported May '03.									
All CLECS									
Market Area	# Significant Software Fails Resolved w/in 48 Hrs	Total Significant Software Failures	# of Timely Resolutions	Retail	Benchmark	Z-Value	Affiliate	Z-Value Comparison	
Oct-03 ALL	1.00	1.00	1.00		.95				
Nov-03									
Dec-03									
Jan-04									
Feb-04									
Mar-04									

Docket 03-0769  
Attachment 5  
ICC Staff Ex. 1.0  
(McClerren)

State of Illinois )

City of Springfield )

**AFFIDAVIT OF SAMUEL S. McCLERREN**

Samuel S. McClerren, under oath, deposes and states as follows:

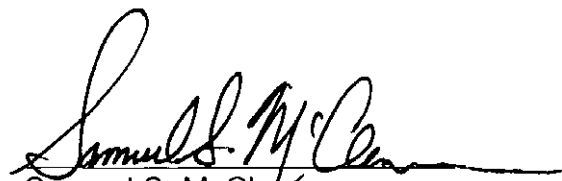
1. My name is Samuel S. McClerren. My business address is 527 East Capitol Avenue, Springfield, Illinois 62701. I am a Engineering Analyst in the Engineering Department of the Telecommunications Division of the Illinois Commerce Commission.

2. This affidavit is made on my personal knowledge.

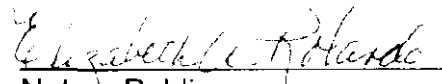
3. I have reviewed the foregoing "Staff Reply Comments on Disputed Issues Resulting from the Billing Performance Measure Collaborative and the Third Six-Month PM Review Collaborative" to be filed in Docket No. 03-0769.

4. I hereby swear and affirm that the facts contained in the above document, as well as the non-legal opinions expressed therein, are true and correct to the best of my knowledge, information and belief.

Further affiant sayeth not.

  
Samuel S. McClerren

Subscribed and sworn to before me this 19th day of May, 2004.

  
Notary Public

